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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation of human rights in the territory of the former Yugoslavia

Periodic report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 45 of Commission resolution 1996/71

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INTRODUCTION

1. Since the submission of her last comprehensive report to the Commission on Human Rights in March 1996 (E/CN.4/1996/63), the Special Rapporteur has conducted five missions to the territory of the former Yugoslavia, visiting locations throughout Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia. The Special Rapporteur has also kept herself informed of developments in the former Yugoslav Republic of Macedonia. She has received extensive assistance on her missions, and in the gathering of information generally, from the Field Operation of the High Commissioner for Human Rights, with its headquarters in Sarajevo and offices in Zagreb, Vukovar, Belgrade, Banja Luka, Mostar and Skopje.

2. The Special Rapporteur wishes to express her appreciation to the Governments of the States included in her mandate for the cooperation and support which they have provided to her since she assumed her post in September 1995. She is also grateful to the many intergovernmental and non-governmental organizations, too numerous to list, which have shared with her their insights concerning the human rights situation in the former Yugoslavia. While the Special Rapporteur's conclusions are entirely her own, they are the result of her continuing communications both with Governments and with many different organizations and individuals.

I. BOSNIA AND HERZEGOVINA

3. During her missions to Bosnia and Herzegovina since the submission of her last comprehensive report, the Special Rapporteur has travelled throughout the country and met with State authorities as well as those of the entities, the Republika Srpska and the Federation of Bosnia and Herzegovina. She has been assisted in her work by numerous international organizations, including the Office of the High Representative, Mr. Carl Bildt. She has also received a great deal of useful information from non-governmental organizations in the country, most of which are located in Sarajevo. The Special Rapporteur has continued to place emphasis on receiving testimonies directly from persons who have been subjected to, or have personal knowledge about apparent human rights violations.

A. Elections

4. The Special Rapporteur has been greatly concerned about the elections in Bosnia and Herzegovina, which have taken place or will take place pursuant to the General Framework Agreement on Peace in Bosnia and Herzegovina of November 1995 (the Dayton Agreement). In this regard she has already issued a special report on human rights and the forthcoming elections (E/CN.4/1997/5), which should be read in conjunction with the present report.

5. Elections for national and entity institutions were held on 14 September 1996. Two weeks before, on 27 August 1996, a decision had been made by the Provisional Election Commission (PEC) of the Organization for Security and Cooperation in Europe (OSCE) to postpone municipal elections, which are now set to take place on 23 and 24 November 1996. The decision was taken because of the concern that the vast majority of Serbian refugees and

displaced persons in the country had registered as voters of municipalities in which they had never lived - and to which they allegedly had no intention of moving - at the expense of Bosniaks displaced from the same locations. The areas in question included Srebrenica and Brcko, from which tens of thousands of Bosniaks had been violently displaced during the years of war between 1992 and 1995. The registration procedure has been regarded as a serious violation of the principles adopted for the elections, as well as of those of the Dayton Agreement.

6. Although this concern was one of the main reasons for the postponement of the municipal elections, there were in fact numerous problems in connection with the elections of 14 September 1996 associated with the deprivation of civil and political rights. In a letter to the Chairman of the Commission on Human Rights dated 22 August 1996 and distributed at her request to the members of the Commission, the Special Rapporteur observed, among other things, that although conditions for free and fair elections did not then exist, it was necessary for the balloting to proceed as scheduled in September. Public expectations that the elections would go ahead were at that time very high, and the small opposition parties as well as non-governmental organizations saw the elections as the first step towards gaining a voice in the country's civil society. There was, furthermore, still some reason, albeit slight, to hope that conditions for voting would improve. Unfortunately, little improvement was registered by 14 September, nor has there been notable progress since.

7. That conditions for free and fair elections in Bosnia and Herzegovina still do not exist is a serious concern. There are still no reliable mechanisms to prevent the registration process from being manipulated to encourage displaced persons and refugees to cast their votes in strategically important municipalities. The Special Rapporteur has therefore suggested that the municipal elections be postponed until the required conditions are met. The date on which they are held is not the most important consideration, rather, it is the existence of conditions which are at least close to international standards of freedom and fairness.

8. The elections of 14 September 1996 suffered owing to, among other reasons, restrictions on free political expression, free association and free movement. Opposition voices were rarely heard in the media, and opposition party members were frequently the target of threats and discrimination. Reports of intimidation were received from throughout the country, as were reports of persons losing their employment, especially in State enterprises, because of their political affiliations. The availability of independent media generally and the accessibility of media controlled by the ruling parties to opposition candidates were limited, particularly in the Republika Srpska and in areas of the Federation controlled by Bosnian Croats. On Government-controlled television in the Republika Srpska, campaign publicity for opposition parties was aired mainly late at night, and then only for a minute or two. Reports were received from the Republika Srpska of intimidation and harassment of independent media which had published information articulating the position of opposition parties.

9. In view of her mandate, the Special Rapporteur is not offering a more detailed analysis of the elections of 14 September 1996. This task, in any

case, has been ably accomplished by other observers and participants, including bodies of the OSCE itself. It should be borne in mind that elections should be judged in their entirety, not only on the basis of election-day events but on the whole campaign process. The range of opinion on the process culminating in the vote of 14 September 1996 indicates, however, that the elections were surely not "free and fair". Nevertheless, it is clearly in the interests of the parties and the people of Bosnia and Herzegovina to proceed on the basis of their official results.

10. The country is now confronted with the task of institution-building. Technical and political problems have so far led to a "blockade" on the activities of the new institutions, as exemplified by the failure to convene the new National Assembly in its entirety on 5 October 1996. Newly elected Serb representatives declined to attend the inaugural ceremony in Sarajevo, citing fears for their security. Political leaders face security concerns in areas throughout the country. In Mostar on 30 September 1996, a newly elected member of the Federation Parliament who has been critical of the ruling Croatian Democratic Union (HDZ) party was injured in a machine-gun attack on his home on the west side of the city. The day before a hand grenade had been thrown onto the property. In the Una-Sana canton in the north-west of the country, representatives from the party headed by Mr. Fikret Abdic have expressed fears for their security. This situation will need to be addressed globally by all responsible authorities.

B. Freedom of movement

11. Restrictions on freedom of movement, violating provisions of the Dayton Agreement as well as of international law, continue to be widespread in Bosnia and Herzegovina. Obstructions have been recorded at or near the Inter-Entity Boundary Line (IEBL), as well as between territory controlled by Bosniak and Bosnian Croat authorities in the Federation of Bosnia and Herzegovina. The majority of incidents occurring at the IEBL have taken place on territory under the jurisdiction of the Republika Srpska. Serious problems have been noted along the road between Sarajevo and Gorazde, as well as near Doboj and Mrkonic Grad. Illegal police checkpoints remain a common phenomenon throughout the country, and numerous travellers, mostly Bosniaks, have been fined, and in some cases detained. On 18 September 1996 the Bosnian Deputy Minister of Education was briefly detained by Republika Srpska police at the IEBL near Kula. The Office of the United Nations High Commissioner for Refugees (UNHCR) has attempted to alleviate restrictions on freedom of movement by establishing bus lines for inter-entity travel, but even these initiatives have been frustrated by local authorities.

12. In the vicinity of Rogatica, in the Republika Srpska it appears that the shuttle bus operating on the so-called interim route between Sarajevo and Gorazde is attacked by stone-throwers almost every second day. Cantonal authorities in Gorazde reportedly have decided for security reasons to start an alternative bus route to Sarajevo through Foca and Trnovo. This route is essential since without access to Sarajevo, Gorazde may be effectively isolated during the winter. Reports have been received that Serbs among the local population in Trnovo have expressed dissatisfaction that the town will be used for the transit of buses carrying Bosniak citizens, and the Republika Srpska's regional police chief was quoted as saying that the safety of

Bosniaks along the road cannot be guaranteed. In a particularly deplorable incident, an ambulance was stoned near Rogatica on 6 October 1996 as it attempted to transport a person to Sarajevo for emergency medical treatment.

C. The right to voluntary return

13. Although a few individuals have returned to their homes in areas dominated by authorities of a different nationality, there has been virtually no organized return of larger numbers of refugees and displaced persons, despite the provisions of annex 7 of the Dayton Agreement. During recent months a number of serious incidents occurred in the Zone of Separation (ZOS) between the two entities. Groups of displaced Bosniaks have attempted to return to their homes located in villages throughout the ZOS with the intention of rebuilding their destroyed houses. The best-known examples are the villages of Mahala and Jusici, where the authorities of the Republika Srpska took steps to prevent such returns.

14. Republika Srpska police blocked the return of some 100 Bosniaks to their home town of Mahala, near Zvornik, on 29 August 1996. When the returnees approached the vicinity, the police warned them not to proceed and fired tear-gas canisters; some 10 Bosniaks reportedly were injured. A second attempt to return two days later similarly failed.

15. On 20 September 1996 a group of more than 100 Bosniaks, some of them armed, entered the village of Jusici, near Zvornik, for the declared purpose of repairing and reoccupying their homes. The village, which had been almost totally destroyed during the war, is located in the ZOS where weapons are banned by the terms of the Dayton Agreement. Republika Srpska authorities, stating that they viewed the incident as part of an attempt effectively to cut the Serb entity in half, demanded that the Bosniaks withdraw. The area has remained a site of extreme tension.

16. On 11 October 1996 the Special Rapporteur made a personal visit to Jusici. Her main purpose was to familiarize herself with the situation by obtaining first-hand information, following an invitation she had received from representatives of the would-be returnees. Early that same morning, five houses in the village had been damaged by explosions. Upon her arrival the Special Rapporteur learned that heavily armed Republika Srpska police had taken three Bosniak men into custody a few hours earlier (the Special Rapporteur later met with one of them, who had been released). Women of the village, armed only with sticks, attempted to block the movement of soldiers of the Implementation Force (IFOR) who were present. The Special Rapporteur offered her support to help calm the confrontation. She pointed out that the villagers had the right to return peacefully to their homes and that weapons were prohibited in the area.

17. The Special Rapporteur went from Jusici to Zvornik where she met with representatives of the Republika Srpska police, the International Police Task Force (IPTF) and IFOR to report her impressions. The local Republika Srpska police commander stated that the villagers were welcome to return to Jusici, but would have to recognize the Republika Srpska's administrative authority over the location and to observe the procedures proposed by international agencies. The Special Rapporteur, at her request, met with the remaining two

Bosniaks in Zvornik, who had been accused of carrying weapons. It appeared that these men had not been physically mistreated by the authorities. In her discussions with all concerned, the Special Rapporteur acknowledged the high level of tension in the Jusici situation, and suggested that it could be resolved through the establishment of a local joint committee. Fortunately, the immediate problem of the detentions in Jusici was resolved an hour later when the remaining two Bosniaks were freed; the freedom of movement of the IFOR soldiers was also restored.

18. The situation observed by the Special Rapporteur at Jusici was a dramatic example of the difficulties which lie ahead for the exercise of the right to return in Bosnia and Herzegovina, in particular in the ZOS. The Special Rapporteur notes with concern that authorities of the Republika Srpska allegedly plan to resettle Serb displaced persons from Sarajevo in the ZOS in an attempt to strengthen their side of the IEBL. It is clear that extensive dialogue between the parties and the assistance of impartial mediators will be necessary to resolve this emotionally charged issue.

19. Owing to the sensitivity of these areas in strategically important regions, the international community has attempted to regularize the implementation of the right to return. On 15 October 1996 the Office of the High Representative (OHR), UNHCR, IFOR, IPTF and the office of the European Commission established, after consultation with officials of Bosnia and Herzegovina and its two entities, a "Procedure for Return and Reconstruction in the Zone of Separation". According to article 1 of the document, property owners "have the right to reconstruct their houses and to re-inhabit them. This right derives from the right to property (annex 6 of the Peace [Dayton] Agreement) and from the right to freely return to homes of origin. At the same time, these rights are to be exercised in an orderly and phased manner (annex 7)". The document requires returnees first to prove ownership of property in the communities at issue. A commission has been established composed of UNHCR as chair, OHR, IFOR and IPTF to decide on applications for return. Whether this initiative will be successful in facilitating returns remains to be seen.

20. Within the Federation as well, slow progress has been recorded on the question of return. For example, Bosniaks have not yet returned to their homes in the Bosnian Croat-controlled town of Stolac. Some limited house repairs have taken place, but it is reported that this was only possible owing to the presence of IPTF and IFOR contingents. In Jajce 202 Bosniak families have returned to their homes as part of a pilot project undertaken with the assistance of UNHCR, but it is reported that three other families, not officially registered in the project, have been turned away by local Bosnian Croat authorities. On 12 May 1996, a crowd of Bosniaks reportedly prevented some 200 Serbs from entering Bosanski Petrovac and burned several homes belonging to Serb families.

D. Personal security and property issues

21. Persons residing in areas dominated by members of another national group continue to face the threat of harassment, assault, forcible eviction and even mortal injury because of their nationality. The Special Rapporteur has already expressed her grave concern at the apparent killing in detention of

Mr. Hasan Kovacevic, a Bosniak, who died within 13 hours of his arrest by Republika Srpska authorities in Banja Luka in August 1996. The Special Rapporteur inquired into this case personally during her visit to the police station in Banja Luka in August 1996. An autopsy reportedly had revealed that the victim had suffered 16 broken ribs.

22. The Special Rapporteur has been apprised of an increased number of cases of eviction throughout the country. It should be pointed out that these evictions have taken place on the territory of both entities. For example, evictions based on nationality have been a serious problem in the Sarajevo area. It was reported in Vogosca on 20 August 1996 that a Bosniak family had moved into a flat belonging to a Serb, evidently with official approval, when the latter left the area for a two-week visit to the Federal Republic of Yugoslavia. Tensions in Vogosca have been high between the few remaining Serbs - some 500 or so - and displaced Bosniaks, particularly from Srebrenica, seeking accommodation in the area. In Novo Sarajevo a Serb resident reportedly left her home one morning to go to the post office and when she returned, found that two men had broken the lock and moved into the premises, with a permit from the municipality. The permit stated that the property was unoccupied. Another incident was reported on 29 September 1996, when four Bosniaks allegedly broke into an apartment in Novo Sarajevo and threatened to kill the occupant, a Serb, unless he left the premises immediately.

23. On 3 September 1996, a group of 11 Bosniaks who had been forcibly evicted from their homes in Vrbanja, near Banja Luka in the Republika Srpska, with whom the Special Rapporteur personally met, were evacuated for resettlement abroad. Additional resettlements are expected, since international agencies have been unable to prevail upon local Bosnian Serb authorities to take adequate security measures for the protection of Bosniaks in Vrbanja.

24. The question of property generally is a major area of concern to the Special Rapporteur. Authorities in both entities of Bosnia and Herzegovina apparently continue to authorize the occupation of property without regard to legal ownership, to the situations of the owners, or to the pertinent provisions of the Dayton Agreement, especially annex 7. The Property Commission established by annex 7 has barely begun to have an effect in this sensitive area.

E. Detention issues

25. There are still persons being detained in Bosnia and Herzegovina in violation of their human rights. The Special Rapporteur has expressed concern, for example, over the case of Mr. Zlatko Memovic, who has been held in the prison at Bjeljina, Republika Srpska, since February 1994 although a court upheld the appeal of his conviction. The original conviction has been annulled but no new trial has been scheduled, despite the lengthy time elapsed. An announcement on 15 September 1996 that Mr. Memovic would soon be released in a prisoner exchange had not resulted in any action as of the time of writing of this report. The Special Rapporteur has also received information on the cases of a Bosniak and a Bosnian Croat detained at Bjeljina

because, according to Republika Srpska authorities, they had crossed the IEBL in February 1996 before such movements were permitted under the Dayton Agreement.

F. Silent emergencies

26. In Bosnia and Herzegovina as well as throughout the territory of the former Yugoslavia, the Special Rapporteur has observed the phenomenon of "silent emergencies". These are crises which are not connected exclusively to the war, but have developed from the region's poor economic conditions. Their victims have virtually no voice in the context of the region's many social problems.

27. Near Sarajevo, the Special Rapporteur visited a centre for mentally disabled persons. It was apparently only due to the efforts of the centre's management that any of the centre's residents survived through four years of war; nevertheless, many of them in fact die. The work of the centre is being carried out today through private initiative, but there is a feeling that these people are virtually unknown to the public. The Special Rapporteur emphasizes that every human life is important. Respect for human dignity must be ensured by the authorities, and should be an integral part of the provision of social services.

28. Another silent emergency, especially in Bosnia and Herzegovina, is the fate suffered by victims of rape, of both sexes and including many children. These persons face problems of various kinds, including traumatic memories of the act itself, and the anguish of the decision whether to keep children conceived through rape or to give them up for adoption. In all of these cases, the victims need protection, psychological care and practical guidance. In the interest of justice and truth, cases of rape should be brought to court. The Special Rapporteur is concerned, however, about the position of witnesses who will testify in domestic courts, or before the International Criminal Tribunal for the Former Yugoslavia, about violations of humanitarian law committed in Bosnia and Herzegovina and elsewhere in the former Yugoslavia. She believes that all such witnesses, and notably victims of sexual abuse, should receive adequate assistance and protection. Personal details should be treated with the strictest confidentiality and not disclosed unless absolutely necessary for the conduct of criminal proceedings. Governments should give priority to protecting such witnesses at the request of domestic courts and the Tribunal.

G. Rights of the child

29. In a communication to the Committee on the Rights of the Child, the Special Rapporteur described the importance she attaches to the situation of children in Bosnia and Herzegovina. In every conflict, unfortunately, the children are among the main victims. Many children are left homeless and sometimes orphaned, bereft of any kind of stability in their lives. It is the responsibility of Governments and international organizations to conduct their work in view of the best interests of children, which are so important to lasting peace.

H. Conclusions and recommendations

30. The responsible authorities in Bosnia and Herzegovina clearly have not provided adequate security for the population. The Special Rapporteur notes with concern that several key human rights aspects of the Dayton Agreement have not been respected at all by the parties. In particular, provisions of annex 7 relating to the right of return of refugees and displaced persons have gone largely unimplemented, mostly due to obstructions posed by authorities of the Republika Srpska as well as Bosnian Croat authorities in the Federation of Bosnia and Herzegovina.

31. Freedom of movement in the country has, if anything, deteriorated in recent months. The Special Rapporteur endorses the proposal to implement a system of uniform car registration plates throughout the country as a means of improving this disturbing situation.

32. The authorities throughout Bosnia and Herzegovina must take steps to comply fully with the Dayton Agreement, since genuine peace will remain elusive if the rights contained in the Agreement are not guaranteed. Economic development measures should be undertaken by the international community in full consideration of the parties' implementation of the Dayton Agreement's provisions promoting the tenets of a civil society.

33. The Special Rapporteur would like to emphasize her view that the authorities should provide greater support to the Federation Ombudsmen, as well as to the mechanisms created by the Dayton Agreement which form the Commission on Human Rights, in order to improve the overall human rights situation. The recommendations of these institutions should be given a meaningful response. The Special Rapporteur hopes to strengthen her cooperation with the Federation Ombudsmen in their important work by, among other measures, undertaking joint investigative missions.

34. International efforts under way to provide training to local police forces throughout Bosnia and Herzegovina are a most welcome development. The Special Rapporteur further wishes to underline her strong support for the work conducted so far by the International Police Task Force which has played a positive role in the country. She urges consideration of an expansion of the IPTF mandate which would allow officers directly to intervene in cases of apparent human rights violations.

35. The Special Rapporteur reiterates her call for the apprehension and transfer to the International Criminal Tribunal at The Hague of all indicted war crime suspects. In the event that local authorities continue to prove unable or unwilling to undertake their obligations in this regard, IFOR should itself take appropriate action. The local authorities should take steps to ensure that local war crimes trials are conducted according to internationally recognized standards, and in particular that the right to open and public trials is respected. International monitors should be provided full access to trial proceedings. Another international entity of great importance is the expert on the special process on missing persons of the Commission on Human Rights. All possible support should be given to the expert,

Mr. Manfred Nowak, to assist him in his endeavours to identify the fate of thousands of missing persons, which is one of the country's most urgent humanitarian problems.

36. The Special Rapporteur has identified education in human rights as a crucial need in all parts of the former Yugoslavia. Younger generations must develop a different approach to human values than those the world has witnessed in the former Yugoslavia during the last five years. There is, therefore, great urgency in including human rights education (i.e. an appreciation for tolerance and a multicultural society) in the curricula of all schools, not only on a voluntary basis but as an important obligation of the different countries' educational systems.

37. The Special Rapporteur especially wishes to draw attention to the "silent emergencies" of Bosnia and Herzegovina, and indeed of the whole of the former Yugoslavia. Amidst all the political commotion of the region there are people suffering quietly but profoundly, people whose human rights deserve attention as much as those of anyone else. The Special Rapporteur has especially in mind some of the people she recently met in Bosnia and Herzegovina, including mentally disabled people in an institution near Sarajevo and the people who have cared for them through the war, and the victims of rape and their families.

II. REPUBLIC OF CROATIA

38. Since the issuance of her last report in March 1996, the Special Rapporteur has visited the Republic of Croatia on three occasions and met with high-level government officials as well as representatives of international and local organizations. She also has received numerous testimonies from individuals during her field missions in the country and visited various locations including refugee centres, churches and a children's hospital. She is assisted in the exercise of her mandate in Croatia by the staff of the Zagreb field office of the High Commissioner for Human Rights. The Special Rapporteur wishes to reiterate her appreciation for the continuing cooperation she has received from the Government of the Republic of Croatia in the implementation of her mandate.

39. The Special Rapporteur has noted several positive developments which have taken place in Croatia since March 1996, many in areas in which she had made specific recommendations. They include the closure of the Kupljensko refugee camp in August 1996 and the resettlement of some of its inhabitants in Croatia and in third countries, while others returned voluntarily to Bosnia and Herzegovina; the signing of the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia, signed at Belgrade on 23 August 1996, which contains important human rights commitments; and the adoption of a new Law on Amnesty on 25 September 1996. The Special Rapporteur has also been encouraged by some positive measures taken with respect to the peaceful reintegration of the region of Eastern Slavonia into Croatia, and the provision of humanitarian assistance to vulnerable populations in the country.

40. The present report considers the above issues and other matters of general human rights concern. It has taken into consideration information

provided to the Special Rapporteur by the Government of Croatia in an aide mémoire dated 12 October 1996. The Special Rapporteur considers at greater length the question of minority rights in Croatia, as well as in the Federal Republic of Yugoslavia, in a special report on minorities (E/CN.4/1997/8) being issued together with the present report.

A. Personal security in the former sectors

41. Although violations of personal security have been significantly reduced in the former Sectors North and South, the Special Rapporteur has noted several disturbing reports received in recent months of attacks against the local Serb population. One of the most serious cases involves the killing of a couple of mixed nationality, a Serb and a Croat, in the village of Bukovica (former Sector North) on 11 September 1996, and the destruction of their house by arson. Looting continues to be a problem. On 2 September, a Serb woman was assaulted by three men in Marici (former Sector South). When she attempted to prevent the men from stealing roof tiles from her home, she was pelted with stones and then terrorized by pistol fire as she ran away. On the night of 17 October 1996, the office of the non-governmental human rights organization Homo in Vrhovine, former Sector North, was broken into by an unidentified man who assaulted and badly beat two persons spending the night there. Though the police were contacted and the man arrested, he was released the next morning and returned to the office where he again threatened the occupants.

42. The Special Rapporteur is also concerned by reports of acts of vandalism which have targeted Serb cultural and historic sites. For example, on 23 August 1996, a Serbian Orthodox church was damaged by an explosive device in Karin (former Sector South), and on 5 September, a bomb was activated by unknown persons in front of the Serbian Orthodox church in Dubrovnik. On 17 September, a Second World War monument in Knin was devastated by a strong explosion. Police investigations are reportedly ongoing in these cases.

43. In her letter to the Chairman of the Commission on Human Rights dated 22 August 1996 the Special Rapporteur relayed her impressions from her mission to former Sectors North and South earlier that month. The letter underlined the Special Rapporteur's view that, one year after Operation Storm, the Croatian authorities were still not providing adequate security to the residents of former Sectors North and South. She continued, "[T]he continuing state of insecurity in former sectors North and South so long after last summer's military operations leads me to conclude that there apparently is an unwillingness on the part of the Croatian authorities to take strong preventive measures to ensure the safety of local residents."

44. The Croatian Minister of Foreign Affairs responded to the Special Rapporteur's comments regarding violent incidents in a letter addressed to the Chairman of the Commission on Human Rights in September 1996. The Minister wrote in part:

> "In order to ensure law and order in the liberated territories, the Croatian Government has to date undertaken significant measures towards providing security to the population living in

these areas, including the deployment of additional police forces. These measures cannot be put into question despite the few regrettable incidents referred to in the Special Rapporteur's letter."

B. Humanitarian and social issues

45. The Special Rapporteur welcomes the measures which have been taken by the Croatian Government, in cooperation with local and international relief agencies, to alleviate the suffering of vulnerable members of the population, particularly in the former Sectors. The Government's project "Let's Save Lives", initiated in 1995, is taking a number of approaches towards meeting its humanitarian goals. These include: providing individual care; surveying the size and needs of the vulnerable population; working to ensure the delivery of necessary documents; coordinating the establishment of a number of specific care facilities. The Government has indicated that it intends to broaden its humanitarian activities during the coming winter. Cooperative projects have been undertaken with numerous international organizations, including the International Federation of Red Cross and Red Crescent Societies, and Equilibre.

46. The Government has noted that its efforts in this area are complicated by the fact that vital statistics and other records have been burnt or otherwise destroyed in the communities in the former Sectors, and that residents are sometimes unable, owing to their advanced age and other factors, to provide necessary information. It further notes that it is confronted with the demanding task of adopting new legislation and institutional arrangements to handle its responsibilities in the areas of employment, social welfare, pension benefits and other matters. The Government advises the Special Rapporteur that laws have been passed affecting employment and worker safety issues, and that others are due to be proposed in the areas of pension, insurance and social welfare, among others.

47. With respect to the Special Rapporteur's previous recommendation that development of local human rights organizations in Croatia, particularly groups concerned with women's and children's issues, should be encouraged, the Government has reported that some 333 intergovernmental and non-governmental organizations are active in the country, some dealing with the above-mentioned matters. The Government further advises that it has established a Committee for Equality and a National Committee for a Plan of Action for Children's Rights, while a national seminar on mechanisms for equality was conducted with the support of the Council of Europe.

48. The Special Rapporteur remains concerned about apparent discrimination in the Government's policy on reconstruction and rehabilitation. Reliable reports continue to indicate a lack of electricity and public services in communities including Dabar, Doljani, Podum, Salamunic, Grabusic, Zaluznica and Glavace in former Sector South, while in other locations services have been provided to ethnic Croat refugees who have been resettled from Kosovo and central Bosnia.

49. Positive developments in the field of employment were recently registered in Ogulin, former Sector North, when international monitors

observed that the local municipality offered a plan for recruitment of 200 residents, among them 30 Serbs, for employment with a railway enterprise.

C. The return of Croatian Serb refugees

50. According to the Croatian Office for Displaced Persons and Refugees (ODPR), some 12,000 Croatian Serb refugees have received permission to return to the country as of 12 October 1996, mostly on the basis of family reunification or proof of citizenship. Of this number, very few have returned to their original place of residence in the former sectors. The authorities have emphasized to the Special Rapporteur that the number of authorized returns of Serbs to Croatia, which has steadily increased during the past year, should be considered in the light of the fact that, to date, no Croatian displaced persons have been able to return to Eastern Slavonia, the formerly Serb-controlled area of Croatia. According to ODPR figures, in August 1996 Croatia had on its territory 167,609 displaced persons and 184,545 refugees whose human right to a home, the Special Rapporteur affirms, requires urgent attention.

51. The head of ODPR has advised the Zagreb office of the High Commissioner for Human Rights that emphasis in the immediate future will be placed on applications for return from relatives of elderly Serbs remaining in the former sectors, who require the assistance of younger family members to lead a normal life. Indeed, fewer than a quarter of the Croatian Serbs who have returned to Croatia so far have re-established residence in the former sectors. A survey is under way which is intended to identify relatives of the most vulnerable persons. Meanwhile, the resettlement of ethnic Croat displaced persons and refugees continues and as of August 1996, some 56,525 such persons had been provided accommodation in the formerly Serb-controlled sectors.

52. The issue of property of Croatian Serb refugees from the former sectors considered to be abandoned continues to be a cause for concern. Although commissions have been established at the local and municipal levels, the record so far reveals that they have been inefficient in resolving requests submitted, mostly by Serbs, for the recovery of property. For example, information has been received about 18 families from Plaski (former Sector South) who have requested, to no avail, the return of their flats, which have been temporarily given over to Bosnian Croat refugees from Banja Luka, Bosnia and Herzegovina. The Special Rapporteur has learned of similar cases in which the ommissions have been unable to effect the return of temporarily occupied properties, although the owners have duly submitted their requests.

53. On the question of return, the Special Rapporteur acknowledges the important recent Agreement on Normalization between the Republic of Croatia and the Federal Republic of Yugoslavia and the Republic of Croatia, signed on 23 August 1996, by which full diplomatic relations were established between the two countries. She notes that the Croatian authorities have emphasized the positive effect that such an agreement could have for the large-scale return of Croatian Serb refugees to their homes, and hopes that imminent developments will prove the Government's forecast correct.

D. The question of amnesty

54. The new Law on Amnesty, passed by the Parliament on 25 September 1996, has been hailed by most observers as a significant step towards both the return of Croatian Serb refugees and the peaceful reintegration of the region of Eastern Slavonia into the rest of the country. However, the Special Rapporteur's attention has been drawn to the need to scrutinize the Law's application in practice.

55. The Law, which became effective on 3 October 1996, applies to criminal acts referred to in Croatian legislation as "participation in armed rebellion", and specifically excludes war crimes. The Law stipulates that all current investigations and trials shall be stopped, all completed trials annulled and all prisoners sentenced for "armed rebellion" released.

56. Some 100 prisoners reportedly were released between 5 and 7 October 1996 from various detention centres in Croatia. The Special Rapporteur has received reliable information, however, that at least seven of these persons were rearrested only a few days after their release in connection with an investigation of alleged involvement in war crimes by the Karlovac Public Prosecutor's Office, although they had not previously been charged with war crimes. The remainder of those released reportedly were to be transported at their request to the FRY for resettlement.

57. The rearrest of several Croatian Serbs is of great concern to the Special Rapporteur, and she will seek to monitor this situation closely. The potential benefit of the new amnesty legislation in raising the confidence of Croatia's Serb population and encouraging returns will be substantially damaged if persons still find themselves the subject of criminal proceedings.

E. The practice of illegal and forcible evictions

58. The Zagreb Office of the High Commissioner for Human Rights continues to receive complaints relating to the forcible and unlawful eviction of persons from State-owned apartments in Croatia. Such evictions have recently been committed by uniformed members of the Croatian Army, for example, on 17 June 1996, when A.G., an ethnic Croat from Split, was evicted by a group of three identified soldiers. The incident sparked a public protest by human rights activists in Zagreb.

59. According to the Croatian Helsinki Committee, in a statement released on 3 October 1996, more than 100 houses were forcibly entered and illegally occupied by a group of soldiers from the Croatian Army, as well as some members of the Croatian War Veterans' Association, in Milna on the island of Brac between 15 August 1996 and the end of September. The perpetrators frequently identified houses and marked them with signs before illegally moving into them.

F. The situation of the media

60. The questions of freedom of expression, and abuse of this freedom, in Croatia continue to be among the Special Rapporteur's major concerns. The draft Public Information Law of the Republic of Croatia was criticized

by experts of the Council of Europe following a visit to Croatia in June 1996 because it did not meet European standards for freedom of expression. After the law was amended, it was adopted by the Croatian Parliament on 2 October 1996. State-owned electronic media remain under the close control of the ruling Croatian Democratic Union (HDZ) party and have frequently denied time to alternative points of view. For example, recent HDZ rallies during the Bosnian elections of September 1996 received extensive and exclusive coverage from State television in Croatia. The authorities have further blocked access to stable frequencies by independent radio outlets, including Radio 101, which has been broadcasting for several years. The transmitters of "Radio Northwest", which had been broadcasting for two years, were seized by the Government on 6 September 1996 despite their request for the allotment of a frequency.

61. In May 1996 the independent daily Novi List of Rijeka was assessed a large tax levy which caused serious concern for the paper's survival. However, court proceedings are still pending in the matter.

62. The Special Rapporteur has noted the judicial decision of 25 September 1996, by which the editor-in-chief and a reporter of the well-known satirical newspaper Feral Tribune were acquitted of charges of slandering the President of the Republic. The case arose from an article published on 29 April 1996 under the title "Bones in a blender", accompanied by a photomontage of the President and a Croatian personality associated with the pro-Nazi regime during the Second World War, which questioned an initiative to honour Croat victims, some of them alleged Nazi collaborators, of mass killings in the 1940s along with earlier victims of mass executions perpetrated by pro-Nazi fascists in power in Croatia at the time. The proposal for indictment by the State Prosecutor had been approved with the written consent of the President of the Republic. The court ruled that the article was an expression of opinion and therefore was protected.

63. The Special Rapporteur wishes to reiterate her concern about the continuing publication of materials advocating nationality based hatred which contravene article 39 of the Croatian Constitution. For example, material appearing in the magazine Nezavisna Drzava Hrvatska raises serious questions. In the summer of 1996, the weekly Panorama, in an interview with the leader of a political party called, Nova Hrvatska Desnica, (New Croatian Rights), published a list of 100 persons proposed for execution, among them prominent independent intellectuals, journalists, and human rights activists.

G. Measures for the protection of human rights

64. In recent months the Government of Croatia has undertaken several measures to promote human rights on its territory, including some taken in coordination with the Council of Europe. Croatia's admission into the Council has been approved and is scheduled to take place formally on 6 November 1996. By a decision of 7 September 1996, a working group for the examination of the compatibility of Croatian legislation with the European Convention on Human Rights was established. In addition, Croatia has entered into cooperation programmes with the Council in the areas of police activities and the promotion of democracy.

65. Croatia is preparing legislation on education in the languages of national and ethnic minorities, and has helped to develop and recently approved educational programmes for Croatian Serb children. National committees have been established for human rights education (6 July 1996), equality (19 July 1996) and human rights generally (26 September 1996). The Office of the Ombudsman will reportedly be expanded with the appointment of 20 supporting regional officers which, it is hoped, will increase the institution's effectiveness. In addition, the Government has welcomed a mission of the Office of the High Commissioner for Human Rights, scheduled for October 1996, to propose technical assistance in the field of human rights.

H. Conclusions and recommendations

66. The human rights situation of the Serb population, particularly those living in the former sectors, remains a serious cause for concern. A decrease in the number of incidents of physical assault, looting and harassment has been recorded, but they continue to occur none the less. The Special Rapporteur reiterates that additional reinforcement of the professional police presence in the area could alleviate difficulties and provide greater security for the remaining population.

67. Although the human rights situation in former Sector North is better in comparison to former Sector South, the lack of a transparent policy for the reconstruction of destroyed houses, the discrepancy between different areas concerning the restoration of public services in general, as well as the inadequate resolution of important matters, particularly regarding properties considered as abandoned, remain disturbing.

68. Regarding another most compelling human rights issue, i.e. freedom of the media notwithstanding the adoption of recent legislation, the Special Rapporteur is in possession of reliable reports that hate speeches are continuing. Effective measures to combat incitement to hatred should be undertaken, particularly in the fields of education and the media.

69. Despite the encouraging signs of various governmental decisions strengthening the promotion and protection of human rights, serious concerns remain with regard to the implementation of those provisions so as to foster a general atmosphere of confidence among various ethnic groups. The return of both refugees and displaced persons should be dealt with as a matter of the utmost priority with due respect for individual rights and freedoms.

70. The Special Rapporteur acknowledges the significant political agreement on normalization reached by Croatia and the Federal Republic of Yugoslavia, and she also welcomes the recent Law on Amnesty adopted pursuant to it. However, concerns about the application of the amnesty law have been raised in view of several rearrests of Croatian Serb detainees only days after their releases under the terms of the amnesty.

71. The Special Rapporteur is particularly aware of various initiatives being undertaken, both by the Republic of Croatia and the Federal Republic of Yugoslavia, to resolve the fate of missing and disappeared persons. Although little hope has been given to the families concerning their loved ones, the Special Rapporteur is of the opinion that the problem of missing persons

should be dealt with as a matter of the highest priority, so as to avoid any impediment to the future coexistence of the different ethnic communities.

72. The Special Rapporteur has full confidence in the activities undertaken by local human rights organizations to promote human rights and fundamental freedoms, for which they deserve strong assistance. Therefore, the implementation of various projects aimed at strengthening the development of the social sphere should be encouraged by the Croatian authorities as well as by the international community.

III. THE REGION OF EASTERN SLAVONIA, BARANJA AND WESTERN SIRMIUM

73. On 12 November 1995, the Republic of Croatia and the de facto Serb authorities in the Eastern Slavonia region of Croatia signed the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium, providing for the peaceful reintegration of the region into Croatia within a one- to two-year period. The United Nations Security Council was requested to establish a transitional administration to govern and to maintain peace and security in the region during the transitional period. On 15 January 1996, the Security Council adopted resolution 1037 (1996) emphasizing that the territories of Eastern Slavonia, Baranja and Western Sirmium were an integral part of the Republic of Croatia and stressing the importance of full respect for human rights and fundamental freedoms of all in those territories. The Council decided to establish, for an initial period of 12 months, a peace-keeping operation with both military and civilian components under the name United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES).

74. The parties to the Basic Agreement agreed to the demilitarization of the region and to the Transitional Administration's facilitation of the return of refugees and displaced persons under secure conditions. The agreement provided for restitution or just compensation in cases in which property was unlawfully taken from such persons. UNTAES was requested to restore the normal functioning of public services in the region without delay, to establish and train a temporary police force, and to build confidence among all national and ethnic communities. Not later than 30 days before the end of the transitional period, elections for local government bodies were to be organized by UNTAES.

75. Based on the recommendation of the Special Rapporteur and following the agreement of the Croatian authorities, the High Commissioner for Human Rights opened a field office in Eastern Slavonia on 1 February 1996. The following discussion is based on information gathered by the Vukovar field office, as well as on information received during two recent visits of the Special Rapporteur to Eastern Slavonia, the latest in October 1996.

A. Security of the person

76. Personal security in Eastern Slavonia has improved dramatically since the last report of the Special Rapporteur. Residents are slowly regaining confidence and streets are becoming more crowded, even in the evenings. A

determining factor in this development was the demilitarization process, completed in June 1996. However, there is strong evidence indicating that many households still possess small weapons. There have been several reports of suicides committed with hand grenades. Particularly alarming was the case of a killing committed by a 15-year-old boy who shot a fellow student dead in front of a school in Borovo in early October 1996. It is to be hoped that the weapons buy-back programme, launched by UNTAES on 2 October 1996, will limit the firearms and explosives still in the possession of private people to those which are duly registered.

77. Following demilitarization of Eastern Slavonia, the role of ensuring law and order was assumed by a local Transitional Police Force (TPF) of mixed nationality. The TPF is supervised by United Nations Civilian Police (CIVPOL) whose mandate is to give guidance to the TPF in putting an end to human rights violations. The arrangement for the most part seems to be successful. However, occasional reports of persons suffering ill-treatment after arrest by the TPF suggests that CIVPOL may need to take a more active approach.

B. Displaced persons and the question of property

78. The plight of displaced persons, Serbs and Croats alike, is one of the most pressing problems in Eastern Slavonia. Five years after its destruction Vukovar, as well as many other communities, still lie in ruins, and though reconstruction work has now begun, there is a great deal of progress yet to be made. Housing is therefore a critical problem, and accommodating the large influx of displaced persons who will probably return following Croatia's resumption of authority over the area will be a daunting task.

79. Indeed, most of the complaints now being received in the region are connected to property disputes, and often to cases of forced co-locations or evictions. It appears that avenues of legal redress are limited, particularly since much of the population regards the region's administrative and judicial institutions with suspicion and even fear. The prolonged climate of violence has made many people unwilling to expose themselves to any form of public scrutiny. Praiseworthy attempts to resolve this problem, for example through the establishment of so-called housing committees, have so far met with only limited success.

80. Of concern are recent declarations made by some Croatian politicians that Croatian Serb displaced persons will not be allowed to stay in the region of Eastern Slavonia and will instead have to move back to their places of origin. Croatia should seek to address this problem in a comprehensive way throughout its territory. It is worth recalling that, under international norms, e.g., the International Covenant on Civil and Political Rights (art. 12),* persons lawfully within a State's territory have within that territory the right to freedom of movement and choice of residence.

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* Article 2 of the Fourth Protocol to the European Convention on Human Rights, although not at present binding on Croatia, is also instructive.

C. Right to a nationality

81. The disintegration of the former Yugoslavia and the transition resulting in the establishment of new States has presented many delicate legal issues, some of which have yet to be resolved. Such is the case with the question of the nationality of persons residing in Eastern Slavonia, Baranja and Western Sirmium. The area's isolation over the past five years has prevented its inhabitants from regularizing their status within the Republic of Croatia and as reintegration approaches, the need for people to obtain recognition of their citizenship is urgent.

82. Commencing in August 1996, documentation centres were opened by the Government of Croatia in cooperation with UNTAES in various towns in Eastern Slavonia. The centres, staffed by Croatian officials, process applications for certificates of citizenship, known as domovnica, identity cards, passports and other documents. The large number of applications already received by these centres suggests that a large part of the local population no longer questions the imminence of reintegration. Nor does this encouraging trend seem to be affected by propaganda issuing from certain radical elements calling for people not to participate. Mainly owing to technical problems and the time needed to process applications, the number of requests so far have not been matched by the number of documents issued, although the Government appears to be making reasonable efforts in this regard. Attentive monitoring by local and international observers will be needed to support this process and help resolve controversies that may arise.

D. Missing persons

83. The resolution of the fate of missing persons remains one of the most pressing human rights concerns in Eastern Slavonia. The Special Rapporteur met with mothers who are still wondering about the fate of their "disappeared" children. She learned about the appalling phenomenon of women being blackmailed in exchange for questionable information concerning the whereabouts of their loved ones.

84. With the excavation of the Ovcara gravesite, reportedly containing Croat victims of mass killings committed at Vukovar in 1991, the important work of identification of war victims in the region has begun. It is believed that in this area there are some 40 mass graves where many of the unaccounted for may be buried. For the peace of mind of many families in Croatia and elsewhere, it is hoped that proper identification work can be carried out.

E. Elections

85. According to the Basic Agreement of November 1995, elections for all local government bodies shall be held not later than 30 days before the end of the transition period. Since they are linked to the end of the mandate of UNTAES, elections have become the subject of a controversy over precisely when they should be held. Some sectors of Croatian public opinion reportedly favour holding elections on 15 December 1996, irrespective of whether the mandate will be renewed. However, UNTAES officials have taken a different stand and announced publicly that the elections will take place in the spring of 1997. It appears certain that controversies will arise concerning exercise

of the right to vote. Croatian officials have already caused some debate with their declaration that only residents appearing in the 1991 census will be allowed to participate in the elections. Opponents argue that this would deprive many persons, possibly even a majority of those now living in the region, of their right to vote. For these reasons, the Special Rapporteur strongly recommends that the mandate of UNTAES be extended.

F. Joint Implementation Committees

86. The executive power for the region of Eastern Slavonia rests with the UNTAES Transitional Administrator, Mr. Jacques Klein. To carry out his mandate, the Administrator has established Joint Implementation Committees (JICs) in which issues are discussed and recommendations made by representatives of the Croatian and Serbian communities under the chairmanship of UNTAES senior officers. JICs also include representatives from different international agencies.

87. To date JICs have been established in the following areas: police, civil administration, restoration of public services, the return of refugees and displaced persons, human rights, elections and records. The human rights JIC has been active for over six months. In its discussions the parties formulated recommendations to the Croatian Government on the amnesty law, and also agreed to establish a sub-committee on human rights training that has laid out a comprehensive programme of seminars for different sectors of society. The first such event took place in July 1996.

88. The JIC is currently considering proposals for international human rights monitoring missions in the region of Eastern Slavonia. Proposals are being reviewed which would bring together international governmental organizations active in the region in an informal body to harmonize and coordinate monitoring activities in order to ensure that resources are used efficiently. Reactions have so far been positive and it is hoped that a monitoring mission will be organized in the near future.

G. Conclusions and recommendations

89. The situation in the region of Eastern Slavonia, Baranja and Western Sirmium in Croatia has improved dramatically over that which prevailed during the war years. UNTAES has successfully handled many aspects of the area's physical and social rehabilitation, and measures recently taken by the Government of Croatia, including the law on general amnesty, offer other reasons for optimism. Croatia's approach to granting recognition of citizenship and facilitating access to social benefits appears to have been positive so far, although some problems have been noted and many people's cases still require action.

90. Humanitarian organizations, both intergovernmental and non-governmental, have also contributed to the improvement of the situation and have helped to safeguard the population's health and well-being. The survival of some people through the next winter may still depend on this assistance.

91. Property disputes promise to be a continuing problem during the reintegration process. As noted earlier, property concerns in Croatia go well

beyond the domain of Eastern Slavonia. Many persons have fled from their villages throughout Croatia leaving their property and belongings behind unattended, and in some cases these properties have been occupied by other displaced families in need of refuge. The Croatian Government has advised the Special Rapporteur that there are at present some 167,609 displaced persons living on its territory. The problems of property and resettlement will be among the major challenges to peaceful reintegration in Croatia and will require good will and understanding from both sides to be acceptably resolved.

92. The region of Eastern Slavonia holds promise of becoming an area of the former Yugoslavia where a multi-ethnic society is successfully restored. There is, however, a risk that mistrust, and the profound hatred that is of such concern to the Special Rapporteur may be too strong to allow a smooth reintegration. The prospect of a new mass exodus still haunts the region. Although projections are cautiously optimistic, no one can rule out the possibility of a large part of the present population seeking to flee the area. All due measures must be taken to ensure that this does not happen. The Special Rapporteur believes that an extension of the mandate of UNTAES would be a confidence-building measure towards this end.

93. A satisfactory conclusion to the region's transition can only come with wise and constructive leadership on all sides. Respect for human rights will be one of the main building blocks for peaceful reconciliation. Especially in the immediate post-UNTAES period, there will be a tremendous need of confidence-building. The Croatian Government should therefore consider allowing international human rights monitors to stay in the region temporarily to assist in building positive relations between the population and the authorities.

IV. FEDERAL REPUBLIC OF YUGOSLAVIA

94. Following the signing of the Dayton Agreement in November 1995, the Federal Republic of Yugoslavia (FRY) has taken significant steps to improve its relations with the international community, including with the other countries of the former Yugoslavia. Full diplomatic relations were established in August and October 1996 with Croatia and Bosnia and Herzegovina respectively. The Agreement on Normalization between the Republic of Croatia and the Federal Republic of Yugoslavia signed on 23 August 1996 provides for a peaceful resolution of disputes and a commitment to refrain from threats or the use of force. Human rights provisions oblige the countries to resolve the issue of missing persons without delay and to create the conditions for a free and safe return of refugees and displaced persons to their residence or places they freely choose.

95. On 3 October 1996, the Presidents of Serbia and Bosnia and Herzegovina also agreed to refrain from political and legal acts not conducive to peace and cooperation. The Special Rapporteur welcomes these agreements, although whether their implementation will be successful remains to be seen.

96. Following the 14 September 1996 elections in Bosnia and Herzegovina, the Security Council lifted sanctions imposed on the Federal Republic of Yugoslavia. However, the considerable economic difficulties currently faced

by the country will not be overcome as long as it is unable to rejoin international financial institutions, for which the Security Council resolution did not provide.

97. The Special Rapporteur is grateful for the support she has received from the Government during the five visits she has undertaken to the country since submitting her last report. In addition to meeting high-level government officials in Belgrade, the Special Rapporteur was able to obtain first-hand information about the human rights situation in Kosovo, Sandzak, Vojvodina and the Republic of Montenegro. She has received support in the exercise of her mandate from the staff of the Belgrade office of the High Commissioner for Human Rights, which was opened in March 1996. The office staff have been able to travel freely throughout the country.

98. The International Criminal Tribunal for the former Yugoslavia opened an office in Belgrade in August 1996. However, the OSCE continues to be barred from monitoring the situation of human rights in the FRY, notably in Kosovo, an area from which numerous human rights violations continue to be reported. In view of recent political developments, the Special Rapporteur believes that the moment has come to strengthen human rights protection mechanisms. The discussion below addresses a number of structural and legislative measures she believes should be taken. Furthermore, the report should be read with the Special Rapporteur's special report on the situation of minorities in the former Yugoslavia, focusing on the situations in Kosovo, Sandzak and Vojvodina.

A. Legal guarantees for the protection of human rights

99. The FRY is party to all major international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. However, the Government has only signed but not ratified the Optional Protocol to the International Covenant on Civil and Political Rights, giving individuals the right to appeal to the Human Rights Committee about alleged infringements of the Covenant. When the Special Rapporteur met the federal minister in charge of human rights and the Serbian minister of the interior in October 1996, she urged the FRY to consider becoming a party to the Optional Protocol.

100. The 1992 Constitution of the FRY, the 1990 Constitution of Serbia and the 1992 Constitution of Montenegro contain important human rights provisions, many of which meet the international human rights standards to which the FRY is a party. However, because the three constitutions were adopted at different times, there is considerable discrepancy in the human rights provisions of each of them. Moreover, victims of human rights violations are prevented access to some key provisions of constitutionally protected human rights. The Government has not yet completed the process of reviewing current criminal and procedural laws to ensure their compliance with the standards in the FRY Constitution and with international human rights standards.

B. Security of the person

101. The Federal Constitution provides important safeguards to persons in detention. Persons suspected of criminal offences may only be detained by order of a competent court when necessary for the conduct of criminal proceedings (art. 24). However, these standards do not apply in practice: the Code of Criminal Procedure (at art. 196) permits persons suspected of criminal offences to be detained for up to 72 hours, without an order from a judge and without access to a lawyer, although the Public Prosecutor has to be informed forthwith of decisions to detain. Appearance before a judge is required after 72 hours to decide on continued detention. Although police appear generally to comply with the provisions of the law, the procedure itself may contravene the constitutional requirement of judicial supervision and fall short of the standard set in article 9 of the International Covenant on Civil and Political Rights, which requires arrested persons to be brought before a judge "promptly".

102. The Special Rapporteur believes that appropriate changes in the Code of Criminal Procedure should be considered which would ensure that the standards laid down by the Federal Constitution and international law are met. Current provisions favour the likelihood of arbitrary arrests. Moreover, torture and ill-treatment often occur when persons are detained in police custody without judicial supervision and without access to a lawyer. The Special Rapporteur continues to receive reports from the FRY of ill-treatment and torture by police during the 72-hour period of preliminary custody.

103. Most such allegations are received from Kosovo. However, the Special Rapporteur has also received reports from criminal lawyers that ill-treatment of suspects in police custody is common throughout the FRY. In March 1996, Mr. Dure Sudija was reported to have jumped out of a window of a police station in Novi Sad. He was taken to hospital and died two weeks later. There were indications that he had been beaten in custody. Conviction of those responsible for ill-treatment or torture is rare; although the law enables victims of such practices to institute criminal complaints, non-governmental organizations report that this is difficult to enforce.

C. The right to life

104. The Federal Constitution proclaims human life to be inviolable and prohibits the death penalty for any criminal offence proscribed by federal legislation (art. 21). Consequently, perpetrators of the most serious crimes defined by Yugoslav law (in chapter XVI of the Federal Penal Code), namely, crimes against humanity and international law, including genocide and war crimes, can never be sentenced to death. However, a person convicted of committing murder can suffer the death penalty: the constitutions of both the Republic of Montenegro (art. 21) and the Republic of Serbia (art. 14) permit capital punishment as an exceptional response for some serious criminal offences. The Special Rapporteur believes that this discrepancy should be resolved and that the higher standard for the protection of the right to life provided for by the Federal Constitution should apply equally in each republic.

D. Freedom of expression and the media

105. The electronic media remain by far the most powerful and influential channel through which the right to freedom of expression can be exercised in the FRY. Outside the main cities, newspapers have only limited circulation largely because of their high price. The pro-Government Politika costs 2 dinars and the independent newspaper Nasa Borba, 3 dinars. Few can afford to buy these publications in an economic climate where the average wage, according to the latest official statistics, is just over 800 dinars per month. Most people therefore rely largely on television to be informed. There is only one television station broadcasting daily news on a country-wide scale: the State-run Radio Television Serbia (RTS). It does so on three channels, with the main news being broadcast on channel 1.

106. With the approach of federal elections scheduled to take place on 3 November 1996, RTS has reportedly devoted most of its political coverage to the Government and its policies. Independent research carried out by the Beta news agency for the week 8 to 14 September 1996 revealed 30 broadcasts on RTS presenting the Government and the ruling party in positive terms, while none gave a negative assessment or opinion. In the main news broadcasts, the activities of the ruling Socialist Party of Serbia (SPS) and its coalition partner, the Yugoslav United Left (JUL), received an average of 43 minutes of coverage, while those of other political parties received 3 minutes.

107. On 31 August 1996, an agreement was reached with several small opposition parties aimed at ensuring equal representation of political parties in the elections. The agreement provided, inter alia, that between 1.5 and 2 minutes were to be allocated at the end of the main television news on RTS to a number of opposition parties, in rotation, to present their programmes. An independent survey has found that all political parties were treated equally in these programmes. However, the parties constituting the opposition coalition Zajedno (Together) refused to sign the agreement, arguing that it was entirely inadequate to present their political programme in a meaningful way.

108. Three other major stations operate from Belgrade: TV Politika, BKTV and TV Studio B. All three stations cover only a limited area, and the only one widely considered to have provided independent news coverage, TV Studio B, lost its independent status in February 1996. The Government has allocated radio frequencies to an increasing number of radio stations throughout the country, including three independent ones, but they also cover only a limited range and generally provide entertainment rather than news. The application of independent Radio 92 for a frequency remains pending, and it continues to operate on a 15-day provisional licence granted in 1989.

109. There are several independent newspapers and periodicals in the FRY. The Special Rapporteur has received no reports of censorship, but independent newspapers have to publish under more difficult conditions than do publications which support the Government. Serbia's only paper plant, Matroz, at Sremska Mitrovica, reportedly allocates newsprint on the basis of a priority list drawn up by the Government, obliging independent newspapers like Nasa Borba to buy paper at a high cost, thus forcing them to increase their purchase price. Beta, a small independent news agency in Belgrade, reportedly

is unable to obtain press releases from official institutions, having been told by a press officer of the Federal Presidency that she "only dealt with the official media".

110. The leader of the opposition Democratic Party, Mr. Zoran Djindjic, was sentenced to four months' imprisonment, suspended for two years, on 20 September 1996 for "insulting the reputation of the Republic of Serbia" and exposing the Prime Minister to "ridicule". Mr. Djindjic had publicly alleged that the Prime Minister had secured substantial gains for himself and the enterprise of which he is co-owner through improper business dealings. He had claimed in his defence that the statement was made as a result of his political activities and that he had "reasonable grounds" to believe that it was true. Although the conviction, under article 98 of Serbia's Penal Code, appears to fall within the terms of FRY law, it demonstrates the dangers for freedom of expression created by a legal provision which is broadly defined and could be used to restrict legitimate criticism of government officials.

111. The Special Rapporteur has also identified some concerns regarding the media situation in Montenegro. It appears that tight control is still maintained on most important media outlets in the republic. Reportedly, the only daily newspaper with national coverage, Pobjeda, mainly carries and supports the views of the ruling Democratic Party of Socialists. The independent press is limited mainly to two weekly news-magazines, Monitor and Onogost Standard, published in Podgorica and Niksic respectively. In addition to three State-controlled national TV and two radio stations there are public radio stations broadcasting in most towns. Private TV and radio stations such as Radio Antena M and TV Elmag in Podgorica operate locally and thus reach only a limited audience. Opposition parties reportedly experience serious difficulties in gaining access to State-controlled media, especially in the periods between elections.

E. The situation of refugees

112. The Office of the United Nations High Commissioner for Refugees (UNHCR), the Commissioner for Refugees in Serbia and the Commissioner for Displaced Persons in Montenegro conducted a census in June 1996 of persons who had fled to the FRY as a result of the war. Preliminary results showed that 646,166 war-affected persons now have asylum in the FRY, 566,275 of whom are recognized as refugees. Of these refugees, 537,937 are in Serbia and 28,338 in Montenegro. Most - 290,667 - came from Croatia, while 232,947 came from Bosnia and Herzegovina (the great majority from the Federation). The majority of refugees (496,386) declared themselves to be Serbs, while the rest said they were either Yugoslavs, Muslims or Croats. Only some 9 per cent of the refugees expressed a wish to be repatriated, and more than half wished to settle in the FRY.

113. The formidable task of supporting such a large number of refugees falls on the Government, as well as on UNHCR, other intergovernmental and non-governmental organizations and on relatives already living in the FRY. The granting of refugee status to persons from the former Yugoslavia is governed both by legislation and policy. UNHCR and non-governmental organizations report that Montenegro has continued to adopt an "open door" policy towards refugees. However, the Republic of Serbia's approach

reportedly has been more restrictive. Exclusion criteria appear to have included national background. The Special Rapporteur was informed that for a period until late 1995, non-Serb asylum-seekers were denied entry into Serbia, and could only enter the country on false documents or with special assistance. Also in apparent contravention of international law, refugee legislation in both Serbia and Montenegro subjects registered refugees to the duty of military service.

114. However, many refugees did not register on arrival. For example, some Serb men who came from Bosnia and Herzegovina failed to register because of their fear of forcible conscription. Other refugees, including many who came from Croatia following that Government's military operations in spring and summer 1995, were not given the possibility to register officially. Thus, they were unable to obtain material assistance and other administrative facilities from the Government. They and other refugees continued to live in uncertainty about their future, pending the adoption of a new law on citizenship.

F. The Law on Citizenship

115. The Special Rapporteur welcomes the promulgation, on 16 July 1996, of the new Yugoslav Law on Citizenship. It will come into force on 1 January 1997. According to the Law, all those who were citizens of the former Socialist Federal Republic of Yugoslavia and of the Republics of Serbia or Montenegro on the date of establishment of the FRY, 27 April 1992, will, regardless of their residence, acquire citizenship by law (art. 46). Those who held the citizenship of another SFRY Republic may, provided they had permanent residence on FRY territory on 27 April 1992 and did not have foreign citizenship (or if they were military personnel) be granted citizenship at the discretion of the Federal Ministry of the Interior.

116. The federal and republican ministries of the interior are jointly authorized to grant citizenship to refugees from the former Yugoslavia currently in the FRY, and applications are to be evaluated "bearing in mind the interests of security, defence and international position of Yugoslavia" (art. 48). This article is of crucial importance to the 340,000 refugees in the FRY who stated they wish to stay in the country. However, the Law's provisions are broadly phrased and give wide discretionary powers to the authorities. All will depend on the manner in which the Law is implemented.

G. The situation of minorities

117. In recent months, the Special Rapporteur has received numerous reports regarding problems of particular importance to minorities living in the Federal Republic of Yugoslavia. She has gathered a great deal of information personally during missions she has undertaken to the provinces of Kosovo and Vojvodina, and the area of Sandzak (the Raska district). She is focusing on these questions in a separate report addressing the situation of minorities generally in the FRY and Croatia. However, the Special Rapporteur wishes here to point out some of her most urgent concerns regarding the situations in Kosovo and Sandzak.

1. Kosovo

118. On 1 September 1996, the President of Serbia, Mr. Slobodan Milosevic, and Dr. Ibrahim Rugova, President of the LDK party, signed an agreement aimed at normalizing the educational situation in Kosovo and bringing ethnic Albanian pupils back to official school facilities. It will be recalled that since 1991, Albanian students have attended classes in so-called "parallel" schools, operating without the approval of Serbian educational authorities. It is estimated that some 300,000 young Albanians currently receive primary and secondary education in these schools. Another 6,000 are enrolled in the "parallel" Albanian university in Pristina. The recent agreement is to be put into practice by a joint commission including representatives of the two parties, and preparations for the commission's establishment are now under way on both sides. It remains to be seen whether there will be progress in the actual implementation of the agreement. The majority of the ethnic Albanian population appears to have accepted the agreement's approach, but time is short and positive results will be needed very soon.

119. The Special Rapporteur continues to receive allegations of serious human rights abuses attributed to the Serbian police authorities in Kosovo. These reports include numerous cases of arbitrary arrests, ill-treatment and torture. She is particularly disturbed by recent reports according to which Albanian teachers have been ill-treated, and in some cases arrested by the police in front of their pupils.

120. Health care in the province is also a great concern of the Special Rapporteur. Much of the local population is distrustful of medical personnel of Serb nationality and has avoided treatment by them, which has placed the health of children at particular risk. A positive step towards resolving this situation was taken with the recent successful polio immunization campaign carried out by the Government in cooperation with the World Health Organization, the United Nations Childrens' Fund and the local NGO Mother Theresa.

121. As elsewhere in the former Yugoslavia, there is in Kosovo the phenomenon of "silent emergencies". For example, in Pristina the Special Rapporteur visited abandoned children who had been simply left in the children's hospital by their mothers, often due to pressures from family. Unfortunately, centres for abandoned children in the area cannot give them the protection and care they deserve.

2. Sandzak

122. The security situation in the Sandzak region appears to have improved significantly in the last year. However, some problems, mainly arising from past abuses, still need to be addressed. In 1992/93, the Muslim population of the Sandzak region suffered repeated bouts of harassment and violent attacks, allegedly perpetrated by Bosnian Serb paramilitary units. It is reported that the Yugoslav Army and police often failed to stop this violence and in some cases even participated in the attacks. As a result of this violence around 4,000 to 5,000 persons were forced to leave their villages in border areas around Sjeverin and Bukovica in 1992/93. Around 500 of these displaced persons now live in the towns of Priboj (Serbia) and Pljevlja (Montenegro),

under very difficult circumstances. Owing to serious security concerns, these people have so far been unable to return to their villages. The Special Rapporteur has been informed that the Government of Montenegro is currently preparing a return programme for the 46 villagers in Pljevlja. The displaced in Priboj have repeatedly asked for security guarantees from the Serbian authorities, in order to visit their homes in the Sjeverin area, but these requests have apparently received no response.

123. In 1992/93, a series of abductions of Sandzak Muslims were carried out in locations close to Priboj. On 22 October 1992, 17 persons from the village of Sjeverin were taken from a bus at Mioce on the short stretch of the road leading through the Republika Srpska. Another 11 persons were abducted in Bukovica on 15 February 1993. On 27 February 1993, 17 persons were removed from a train at the railway station in Strpci. According to the Government, Bosnian Serb paramilitaries are responsible for most of these disappearances. The official investigations of these incidents have been without result, and no reports on these inquiries have been published.

124. Following her mission to Sandzak in May 1996 the Special Rapporteur wrote to the Minister of the Interior of Serbia, requesting information on the current state of investigations into the abductions. On 24 June 1996 the Secretary of the Commission for Humanitarian Questions and Missing Persons of the Federal Government, Mr. Maksim Korac, replied to her letter claiming that the Commission had no knowledge of those incidents. A subsequent letter to the Special Rapporteur from the Minister of Justice in July 1996 stated that the Federal Republic of Yugoslavia had no authority to investigate the incident since it had evidently happened on the territory of the Republika Srpska, in Bosnia and Herzegovina. The Special Rapporteur has raised this question with President Milosevic who promised to take care of the problem personally. As one possible solution the Special Rapporteur proposed that an international commission of experts be established to assist the Yugoslav authorities.

H. Non-governmental organizations and avenues for redress

125. The Special Rapporteur appreciates the assistance she has received from a number of non-governmental organizations throughout the FRY, including in Kosovo, Sandzak and Vojvodina. Belgrade-based organizations continue to produce carefully documented and authoritative reports about violations of human rights. Increasingly, they also provide human rights training and some legal advice to those seeking enforcement of their civil and political, social and economic rights. Lawyers associated with these NGOs advise refugees about their status and help relatives of the "disappeared" as well as members of minority groups and trade unions. Generally, non-governmental organizations are free to operate, although it occasionally happens that persons employed by these organizations are called to the police for so-called "informative talks", a practice for which there appears to be no legal basis. One organization reported that the Government had begun to respond to a few individual cases, but all organizations complain that the detailed reports they produce and send with specific recommendations to numerous government officials almost invariably go unanswered. At most they receive an acknowledgement, but virtually never a substantive reply.

126. The Special Rapporteur believes that these problems are all the more significant because of the lack of independent official mechanisms to deal promptly and effectively with complaints of infringements of human rights without the need for recourse to the courts. The Special Rapporteur believes the establishment of an ombudsman-type institution in the FRY could considerably enhance the protection of human rights.

I. Conclusions and recommendations

127. Whereas the human rights situation in the Federal Republic of Yugoslavia has improved in several areas, the Special Rapporteur is disturbed that reports of serious human rights violations persist. The important steps which have now been taken to re-establish peace and security in the former Yugoslavia will not be successful as long as human rights are not effectively guaranteed.

128. The Government should strengthen legal guarantees for human rights protection, including by considering ratification of the Optional Protocol to the International Covenant on Civil and Political Rights.

129. The Government should create an effective independent mechanism, such as a competent ombudsman of high moral standing, to deal speedily and impartially with complaints of human rights violations.

130. The Government should complete, as soon as possible, the process of legal review to ensure that all of its laws comply with the human rights standards set out in the FRY Constitution. The Special Rapporteur believes that the current lack of consistency and resulting legal uncertainty should be resolved to prevent arbitrary decisions and to ensure that laws fully comply with constitutional and international standards.

131. In particular, provisions permitting suspects to be held for 72 hours in police custody without judicial supervision should be brought into line with the narrower limits set in international standards, notably the International Covenant on Civil and Political Rights. Provisions in the Penal Code of Serbia penalizing "public exposure to ridicule" should be reviewed to ensure that they fully comply with the right to freedom of expression guaranteed in that Covenant.

132. In the run-up to the November 1996 elections, the Government should provide conditions of genuine freedom and fairness. In particular, it should ensure that State-controlled electronic media provide balanced and equal coverage both to the ruling party and to the opposition coalition.

133. The Convention relating to the Status of Refugees requires the FRY to facilitate, as far as possible, the assimilation and naturalization of refugees. Considering the uncertainty and vulnerability faced by refugees awaiting regularization of their status, the Special Rapporteur recommends the early and effective implementation of the Yugoslav Law on Citizenship. She urges the ministries of the interior to exercise the broad discretion provided for by the Law as liberally as possible in respect of all citizens of the former Yugoslavia, notably refugees who are now in the FRY and who wish to obtain FRY citizenship.

134. The Government should take effective steps to halt police abuses in Kosovo, which reportedly remain widespread.

135. The Government should permit international and regional human rights monitoring organizations to establish a presence in Kosovo, a location of particular concern to the Special Rapporteur.

136. The lack of progress in the investigations of the 1992/93 abductions in Sandzak is a matter of serious concern. The governments of Serbia and Montenegro should renew their efforts to clarify the fate and whereabouts of these persons, publish the reports of the investigations conducted and bring those responsible to justice.

137. The Special Rapporteur welcomes the efforts of the Government of Montenegro to facilitate the return of the displaced from Bukovica. The Government of Serbia should provide adequate assistance to the displaced families in Priboj and enable them to return to their homes.

V. GENERAL CONCLUSIONS AND RECOMMENDATIONS

138. The human rights situations in the countries covered by the Special Rapporteur's mandate are very closely interconnected. For example, the policies of Croatia and the Federal Republic of Yugoslavia are of fundamental importance to developments in Bosnia and Herzegovina, a fact which was expressly recognized by the Dayton Agreement. The Special Rapporteur believes that consideration of the human rights situation in the territory of her mandate continues to require a broad approach encompassing all of the countries discussed in the present report, since none pursues its policies in isolation from the others.

139. As noted earlier, a crucial need identified by the Special Rapporteur in all parts of the former Yugoslavia is education in human rights. Younger generations must develop an approach to human values different from the one the world has witnessed in the former Yugoslavia during the last five years. It is, therefore, a matter of great urgency that human rights education be included in the curricula of all schools, not as an optional subject but as a mandatory obligation of the educational system of each country.

140. The Special Rapporteur attaches great importance to questions relating to the rights of the child. She believes that it is the responsibility of Governments and international organizations to conduct their work in view of the best interests of children, which are so important to lasting peace.

141. On the important issue of press freedom, the Special Rapporteur has been encouraged by round-table discussions she recently held in Bosnia and Herzegovina, at Banja Luka and Sarajevo, with members of the press. She hopes to pursue these exchanges in the future, to attempt to develop strategies in cooperation with local journalists for ensuring the democratic ideal of the free expression of opinion.

142. The Special Rapporteur wishes to reiterate her particular concern about the "silent emergencies" of Bosnia and Herzegovina, and indeed of the whole of the former Yugoslavia. Amidst all the political commotion of the region there are people suffering quietly but profoundly; their human rights deserve attention as much as those of anyone else. They include, as noted earlier, some of the people the Special Rapporteur recently met in the territory, including mentally disabled people in an institution near Sarajevo and the people who cared for them throughout the war, and the victims of rape and their families.